

**4-963A. Temporary order of protection against petitioner and order to appear.**

Family Violence Protection Act, Sections 40-13-1 to 40-13-8 NMSA 1978.]

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

\_\_\_\_\_, Petitioner

v.

No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**TEMPORARY ORDER OF PROTECTION  
AGAINST PETITIONER  
AND ORDER TO APPEAR**

The court has reviewed the sworn counter-petition alleging domestic abuse. The court having considered the petition, **FINDS** that the court has jurisdiction and that there is probable cause to believe that an act of domestic abuse has occurred. The court **ORDERS**:

[ ] 1. Petitioner shall not write to, talk to, visit or contact the respondent in any way except through respondent's lawyer, if respondent has a lawyer.

[ ] 2. Petitioner shall not abuse the respondent or the respondent's household members in any way. "Abuse" means any incident by petitioner against respondent or

respondent's household members resulting in (1) physical harm; (2) severe emotional distress; (3) bodily injury or assault; (4) a threat causing imminent fear of bodily injury; (5) criminal trespass; (6) criminal damage to property; (7) repeatedly driving by a residence or workplace; (8) telephone harassment; (9) stalking; (10) harassment; (11) harm or threatened harm to children in any manner set forth above.

☐ 3. Petitioner shall not ask or cause other persons to abuse the respondent or the respondent's household members.

☐ 4. Petitioner shall not go within \_\_\_\_\_ yards of the respondent's home or school or workplace. Petitioner shall not go within \_\_\_\_\_ yards of the respondent at all times except \_\_\_\_\_. If at a public place, such as a store, petitioner shall not go within \_\_\_\_\_ yards of respondent.

☐ 5. \_\_\_\_\_ shall have temporary physical custody of the following child(ren): \_\_\_\_\_.

☐ 6. With respect to the child(ren) named in the preceding paragraph, ☐ respondent ☐

petitioner shall have:

☐ A. No contact with the child(ren) until further order of this court and shall stay \_\_\_\_\_ yards away from the child(ren)'s school.

☐ B. Contact with the child(ren), subject to: \_\_\_\_\_  
\_\_\_\_\_.

☐ 7. Neither party shall remove the child(ren) named in the preceding paragraph from the State of New Mexico or disenroll them from the child(ren)'s present school during the period of this temporary order of protection.

☐ 8. The court may decide temporary child and interim support at the hearing listed below. Both parties shall bring to the hearing proof of income in the form of the two latest pay stubs or the federal tax returns from the previous year, proof of work related day-care costs and proof of medical insurance costs for the child(ren).

☐ 9. ☐ A. Petitioner is ordered to immediately leave the residence at \_\_\_\_\_ and to not return until further court order.

☐ B. Law enforcement officers are hereby ordered to evict petitioner from the residence at \_\_\_\_\_

\_\_\_\_\_.

☐ C. Petitioner is ordered to surrender all keys to the residence to law enforcement officers.

☐ 10. Law enforcement officers or \_\_\_\_\_ shall accompany ☐ respondent ☐ petitioner to remove essential tools (as specified in No. 13), clothing, and personal belongings from the residence at

\_\_\_\_\_  
\_\_\_\_\_.

☐ 11. Neither party shall transfer, hide, add debt to, sell or otherwise dispose of the other's property or the joint property of the parties except in the usual course of business or for the necessities of life. The parties shall account to the court for all such changes to property made after the order is served or communicated to the party. Neither party shall disconnect the utilities of the other party's residence.

☐ 12. This order supersedes any inconsistent prior order in Cause No.

\_\_\_\_\_ and any other prior domestic relations order and domestic violence restraining orders between these two parties.

[ ] 13. Other: \_\_\_\_\_  
\_\_\_\_\_.

[ ] 14. While this order of protection is in effect, respondent should refrain from any act that would cause the petitioner to violate this order. This provision is not intended to and does not create a mutual order of protection. Under Section 40-13-6(D) NMSA 1978, only the restrained party can be arrested for violation of this order.

## HEARING

IT IS FURTHER ORDERED that the parties shall appear in the \_\_\_\_\_  
\_\_\_\_\_ Judicial District Court, Room \_\_\_\_\_, at  
\_\_\_\_\_, before \_\_\_\_\_, at \_\_\_\_\_ (a.m.) (p.m.) on  
\_\_\_\_\_ (*date*) for hearing on whether an extended order of protection against domestic abuse will be issued. Either party may bring witnesses or evidence and may be represented by counsel at this hearing. Petitioner may file a Response to the Petition for Order of Protection from

Domestic Abuse, *see* Form 4-962 NMRA, on or before the hearing. If the petitioner fails to attend this hearing, an extended order may be entered by default against petitioner and a bench warrant may be issued for petitioner's arrest. If respondent willfully fails to appear at this hearing, the counter-petition may be dismissed. This order remains in force until \_\_\_\_\_, \_\_\_\_\_.

**DO NOT BRING ANY CHILDREN TO THE HEARING WITHOUT PRIOR PERMISSION OF THE COURT.**

**ENFORCEMENT OF ORDER**

If the petitioner violates any part of this order, the petitioner may be charged with a crime, arrested, held in contempt of court, fined or jailed.

**SERVICE AND NOTICE TO LAW ENFORCEMENT AGENCIES**

Upon the signing of this order by a district court judge, a law enforcement officer shall serve on the petitioner a copy of this order and a copy of the counter-petition.

**A LAW ENFORCEMENT OFFICER SHALL USE ANY LAWFUL MEANS TO ENFORCE**

**THIS ORDER.**

[ ] I have reviewed the counter-petition for an order of protection and made recommendations to the district judge regarding its disposition.

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*(Signed)*

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Court telephone number

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*(Title)*

**SO ORDERED:**

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District Judge

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Date and time approved

**USE NOTE**

- 1 The temporary order of protection and order to appear requires a proof of return of service. The committee has been informed that each local law enforcement agency has its own return of service form will be used for this purpose.
2. Personal service of the temporary order of protection and order to appear will assure that the temporary order is fully enforceable. It is possible that actual notice to the petitioner of the content of the temporary order will also suffice to bind the petitioner to comply with the order. *Territory of New Mexico v. Clancy*, 7 N.M. 580, 583 (1894).

[Approved, effective May 1, 2001; as amended by Supreme Court Order 07-8300-20, effective September 17, 2007; as amended by Supreme Court Order No. 08-8300-40, effective December 15, 2008.]